

portion of such intangible asset or funds obtained through such capital instrument as core or supplementary capital, permanently or on a temporary basis, for the purposes of compliance with this part or for any other purposes. Similarly, the Office may find that a particular asset or core or supplementary capital component has characteristics or terms that diminish its contribution to a savings association's ability to absorb losses, and the Office may require the discounting or deduction of such asset or component from the computation of core, supplementary, or total capital.

[54 FR 49649, Nov. 30, 1989, as amended at 57 FR 33441, July 29, 1992]

**§ 567.12 Qualifying intangible assets and mortgage servicing rights.**

(a) *Scope.* This section prescribes the maximum amount of qualifying intangible assets, as defined in § 567.1 of this part, and mortgage servicing rights that savings associations may include in calculating tangible and core capital.

(b) *Definition. Qualifying intangible assets and mortgage servicing rights* means purchased credit card relationships and mortgage servicing rights (both originated and purchased). Mortgage servicing rights (both originated and purchased) may be included (that is, not deducted) in computing core and tangible capital. Purchased credit card relationships may be included in computing core capital, but must be deducted in computing tangible capital. These qualifying intangible assets and mortgage servicing rights may be included in capital only in accordance with the limitations and restrictions set forth in this section. Intangible assets, as defined in § 567.1 of this part, other than purchased credit card relationships and core deposit intangibles grandfathered by paragraph (g)(3) of this section, must be deducted in computing tangible and core capital.

(c) *Market valuations.* The OTS reserves the authority to require any savings association to perform an independent market valuation of qualifying intangible assets and mortgage servicing rights on a case-by-case basis or through the issuance of policy guidance. An independent market valuation,

if required, shall be conducted in accordance with any policy guidance issued by the OTS. A required valuation shall include adjustments for any significant changes in original valuation assumptions, including changes in prepayment estimates or attrition rates. The valuation shall determine the current fair market value of the qualifying intangible assets and mortgage servicing rights by applying an appropriate market discount rate to the net cash flows expected to be generated from the qualifying intangible assets and mortgage servicing rights. This independent market valuation may be conducted by an independent valuation expert evaluating the reasonableness of the internal calculations and assumptions used by the association in conducting its internal analysis. The association shall calculate an estimated fair market value for the qualifying intangible assets and mortgage servicing rights at least quarterly regardless of whether an independent valuation expert is required to perform an independent market valuation.

(d) *Value limitation.* For purposes of calculating core capital under this part (but not for financial statement purposes), qualifying intangible assets and mortgage servicing rights must be valued at the lesser of:

(1) 90 percent of their fair market value determined in accordance with paragraph (c) of this section; or

(2) 100 percent of their remaining unamortized book value determined in accordance with the instructions for the Thrift Financial Report.

(e) *Core capital limitation.*—(1) *Aggregate limit.* The maximum aggregate amount of qualifying intangible assets and mortgage servicing rights that may be included in core capital shall be limited to the *lesser* of:

(i) 50 percent of the amount of core capital computed before the deduction of any disallowed qualifying intangible assets or mortgage servicing rights; or

(ii) The amount of qualifying intangible assets and mortgage servicing rights determined in accordance with paragraph (d) of this section.

(2) *Reduction by deferred tax liability.* Associations may elect to reduce the

amount of their disallowed (i.e., not includable in capital) originated mortgage servicing rights exceeding the 50 percent aggregate limit by the amount of any associated deferred tax liability.

(3) *Sublimit for purchased credit card relationships.* In addition to the aggregate limitation on qualifying intangible assets and mortgage servicing rights set forth in paragraph (e)(1) of this section, a sublimit shall apply to purchased credit card relationships. The maximum allowable amount of purchased credit card relationships shall be limited to the lesser of:

(i) 25 percent of the amount of core capital computed before the deduction of any disallowed qualifying intangible assets or mortgage servicing rights; or

(ii) the amount of purchased credit card relationships determined in accordance with paragraph (d) of this section.

(f) *Tangible capital limitation.* The maximum amount of mortgage servicing rights that may be included in tangible capital shall be the same amount includable in core capital in accordance with the limitations set by paragraph (e)(1) of this section.

(g) *Grandfathering.* (1) Notwithstanding the core capital and tangible capital limitations set forth in paragraphs (e) and (f) of this section, any otherwise disallowed purchased mortgage servicing rights that were acquired on or before February 9, 1990, and any otherwise disallowed purchased mortgage servicing rights for which a contract to purchase the servicing rights had been executed on or before February 9, 1990, may be grandfathered and recognized for regulatory capital purposes under this part to the extent permitted by the OTS. Grandfathered purchased mortgage servicing rights must be treated in accordance with generally accepted accounting principles and the requirements of paragraphs (c) and (d) of this section. Grandfathered purchased mortgage servicing rights will count toward the core capital and tangible capital limitations described in paragraphs (e) and (f) of this section.

(2)(i) On a case-by-case basis, the OTS may extend grandfathered treatment prospectively to all or part of the purchased mortgage servicing rights acquired by an association to replace

its grandfathered purchased mortgage servicing rights if OTS determines that:

(A) The association is reducing, at an acceptable rate, its level of purchased mortgage servicing rights to the levels permitted by this section; and

(B) The granting of such grandfathered treatment is consistent with the safe and sound operation of the association.

(ii) The OTS may terminate or limit such grandfathered treatment at any time if it determines that either of the conditions in paragraph (g)(2)(i) of this section is not being satisfied.

(3) Core deposit intangibles resulting from transactions consummated or under firm contract on the effective date of this rule may be grandfathered and recognized for capital purposes under this part, to the extent permitted by OTS, provided that such core deposit intangibles are valued in accordance with generally accepted accounting principles, supported by credible assumptions, and have their amortization adjusted at least annually to reflect decay rates (past and projected) in the acquired customer base.

(h) *Exemption for certain subsidiaries.*—

(1) *Exemption standard.* An association holding purchased mortgage servicing rights in separately capitalized, non-includable subsidiaries may submit an application for approval by the OTS for an exemption from the deductions and limitations set forth in this section. The deductions and limitations will apply to such purchased mortgage servicing rights, however, if the OTS determines that:

(i) The thrift and subsidiary are not conducting activities on an arm's length basis; or

(ii) The exemption is not consistent with the association's safe and sound operation.

(2) *Applicable requirements.* If the OTS determines to grant or to permit the continuation of an exemption under paragraph (h)(1) of this section, the association receiving the exemption must ensure the following:

(i) The association's investments in, and extensions of credit to, the subsidiary are deducted from capital when calculating capital under this part;

(ii) Extensions of credit and other transactions with the subsidiary are conducted in compliance with the rules for covered transactions with affiliates set forth in sections 23A and 23B of the Federal Reserve Act, as applied to thrifts; and

(iii) Any contracts entered into by the subsidiary include a written disclosure indicating that the subsidiary is not a bank or savings association; the subsidiary is an organization separate and apart from any bank or savings association; and the obligations of the subsidiary are not backed or guaranteed by any bank or savings association and are not insured by the FDIC.

[59 FR 4788, Feb. 2, 1994, as amended at 60 FR 39232, Aug. 1, 1995; 62 FR 66264, Dec. 18, 1997]

**§ 567.13 Obligations of acquirors of savings associations to maintain capital.**

(a) *Definitions.* As used in this section, the following definitions apply, unless the context otherwise requires:

(1) *Acquiror* means a person or company that controls a savings association.

(2) *Control* means control as determined under § 574.4(a) or (b) of this chapter.

(3) *Capital* means the measure of capital used in the applicable capital maintenance obligation.

(4) *Capital maintenance obligation* means an obligation to maintain the capital of a savings association imposed by means of a resolution issued or condition imposed by the Federal Savings and Loan Insurance Corporation ("FSLIC"), the Federal Home Loan Bank Board ("Board"), the Office, or any of their delegates, a stipulation to the FSLIC, the Board, the Office, or any of their delegates, or an agreement between the acquiror and the FSLIC, the Board, the Office, or any of their delegates.

(5) *Deficiency* means the amount by which the level at which the acquiror is required to maintain the association's capital pursuant to a capital maintenance obligation exceeds the savings association's capital.

(6) *Divestiture* or *divest* means any action or conduct that would result in the acquiror no longer being in control of the savings association.

(7) *Savings association* means a Federal savings and loan association or a Federal savings bank chartered under section 5 of the Home Owners' Loan Act, a building and loan, savings and loan or homestead association or a cooperative bank (other than a cooperative bank described in 12 U.S.C. 1813(a)(2)) the deposits of which are insured by the Federal Deposit Insurance Corporation, and any corporation (other than a bank) the deposits of which are insured by the Federal Deposit Insurance Corporation that the Office and the Federal Deposit Insurance Corporation jointly determine to be operating in substantially the same manner as a savings association, and shall include any savings bank or cooperative bank which is deemed by the Office to be a savings association under 12 U.S.C. 1467a(1).

(8) *Savings and loan holding company* means a savings and loan holding company as defined in § 574.2(q) of this chapter.

(b) *Notice.* Prior to divestiture of a savings association, an acquiror that is subject to a capital maintenance obligation shall provide written notice of such divestiture to the Office on Form DV, including the certifications required therein. If the acquiror is unable to provide such certifications, the acquiror may submit alternative certifications addressing the subjects of each certification, in a form acceptable to the Office.

(c) *Determination of deficiency.* Upon receipt of the notice required under paragraph (b) of this section, the Office will conduct a full or limited scope examination of the savings association, as deemed appropriate, to ascertain whether a deficiency exists as of the date of the examination. If such examination is not completed within 90 days of the notice required under paragraph (b) of this section, or the Office has not communicated the results of the examination to the acquiror within such period, the deficiency, if any, shall be calculated based on the savings association's most recent Thrift Financial Report, filed prior to the notice of divestiture, *provided, however*, that if the failure to complete an examination within 90 days is caused by any failure of the association or the acquiror to